IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION 1

HILL RHF HOUSING PARTNERS, L.P.; and OLIVE RHF HOUSING PARTNERS, L.P., Plaintiffs/Petitioners and Appellants, v. CITY OF LOS ANGELES; DOWNTOWN CENTER BUSINESS IMPROVEMENT DISTRICT; and DOWNTOWN CENTER BUSINESS IMPROVEMENT DISTRICT MANAGEMENT CORPORATION, Defendants/Respondents and Respondents.	Court of Appeal No. B288356

Los Angeles County Superior Court Case No. BS138416
Hon. Amy D. Hogue, Department 86, (213) 830-0786
Judge of the Superior Court

APPELLANTS' REPLY BRIEF

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I.

INTRODUCTION

The City severely misconstrues RHF's arguments, the trial court's ruling, and the applicable law, attempting to direct attention away from the plain language of the Settlement Agreement, which simply provides that the City is to reimburse RHF for any assessments paid to DCBID for so long as DCBID continues in the same formulation.

Faced with the straightforwardness of Paragraph 5, the City argues that every *other* provision terminated the Settlement Agreement on December 31, 2017 – a date which does not appear once in the language of the Settlement Agreement. Specifically, the City argues that Paragraph 6, not Paragraph 5, is central to the enforceability of the Settlement Agreement through DCBID's renewed term. However, the Settlement Agreement does not support the City's position, and when read as a whole, including Paragraphs 1, 2, 4, and 6 of the Recitals and Term 1.a.i-ii, the Settlement Agreement must be interpreted in accordance with RHF's position.

Additionally, correspondence between the City and RHF, exchanged prior to a final determination of an issue between the parties, demonstrates

the parties' understanding that Paragraph 5 is the central provision, and all that is required for enforceability is continuation of DCBID in the same formulation.

Given that DCBID is continuing with the same boundaries, services, management, and methodology that it had during its prior term, the Court of Appeal should hold that the Settlement Agreement is enforceable through DCBID's renewed term. The fact that DCBID did not properly account for general benefits during its previous term, in contrast to DCBID's effort to comply with Article XIII D by ascribing some value to general benefits during its renewed term, does not render DCBID a new and different entity.

Lastly, the Court of Appeal should reject the City's lackluster defense of the trial court's ruling – that it should be upheld "[r]egardless of whether the Court erred in its ruling[] [since] the City has shown that the result is correct and should be affirmed." *See* Respondent's Brief ("RB") at 32. First, the trial court erred in adopting the City's "maximum relief" approach and preliminarily finding that the Settlement Agreement is necessarily limited by the Petition commencing the underlying lawsuit. This preliminary finding infected the entire ruling. Second, the City

attempts to avoid the fact that the trial court did not conduct a plain language reading of the Settlement Agreement by reasoning that the trial court conducted a "common sense reading" of the Settlement Agreement – however, the two concepts are not interchangeable. Third, the City fails to justify the trial court's failure to account for RHF's fourth cause of action, even if, assuming *arguendo*, the Settlement Agreement is limited to the Petition. Fourth, contrary to the City's argument, the trial court expressly changed the language of the Settlement Agreement, notwithstanding legal authority cited by RHF precluding the trial court from interposing terms into 664.6 settlement agreements. The City failed to address, much less counter, this authority, and simply relied on the so-called "common sense" reading that the trial court improperly applied. Accordingly, the trial court's interpretation must be reversed.

II.

THE CITY SEVERELY MISCONSTRUES RHF'S PLAIN LANGUAGE ANALYSIS.

RHF's request to give proper effect to Paragraph 5, the only paragraph which specifically addresses the duration of the Settlement Agreement, is not an argument "that the vast majority of the Agreement is

meaningless." *See* Respondent's Brief ("RB") at 16. Indeed, the Court *must* give effect to Paragraph 5 in construing the Settlement Agreement as a whole. *See* Civil Code § 1641 ("The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other"). As already discussed in Appellants' Opening Brief ("AOB"), it is **not** RHF's position that Paragraphs 2 and 6, or any other provision, should be rendered meaningless. *See* AOB at 41-43. Rather, it is RHF's position that Paragraph 5 is central to the issue of duration, whereas Paragraphs 2 and 6 respectively have their own purpose and effect and are not intended to be, and should not be, interpreted to render Paragraph 5 nugatory or inoperative. In other words, all of the paragraphs are consistent with each other under RHF's plain language interpretation of Paragraph 5. Moreover, it is not RHF's position that the Settlement Agreement is indefinite, despite the City's efforts to paint it as such. *See* AOB at 31-32. Because the City misconstrues RHF's arguments, the City fails to adequately counter RHF's plain language analysis.

A. The Plain Language of the Settlement Agreement Must Be Given Proper Effect.

The City disregards the centrality of Paragraph 5 and insists that the other paragraphs contained in the Recitals of the Settlement Agreement, combined, create an *express* termination date of December 31, 2017.[1] RB at 22. First, ignoring a central paragraph and combining the others to argue an inference, is not a "plain reading" argument. Second, these paragraphs were not intended to be combined to form a Recitals section wholly dedicated to "expressly" terminating the Settlement Agreement on December 31, 2017, a date that does not once appear in the Settlement Agreement.[2] *See* II AA 7 at 227. Obviously, if December 31, 2017 was the express termination date, it could easily have been – and *would* have been – written into the Settlement Agreement by the City, which drafted the document. *See* II AA 7 at 244. On the other hand, Paragraph 5 is indisputably on point:

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[1] In support of this, the City makes the circular and contradictory argument that the Settlement Agreement provides December 31, 2017 as the "exact" termination date, while conceding that it is an "inexplicit" end date. RB at 22, n. 1.

[2] The City seems to misuse the term "expressly," which one court has found to mean "an express manner; in direct or unmistakable terms; explicitly, definitely; directly." *See Schauer v. Mandarin Gems of Cal., Inc.* (2005) 125 Cal.App.4th 949, 950 (pertaining to whether a contract "expressly" manifested an intent to benefit a third party). Here, there is nothing "expressly" supporting the City's argument. Rather, the City's argument is based purely on inferences.

> In order to resolve the matters raised and described in the Litigation, the City will undertake to make the Plaintiffs whole for those assessments made by the DCBID against the properties owned by Plaintiffs at the time of the formation of the DCBID, as described in the Petition. **For so long as the Plaintiffs remain the owners of these properties, and the DCBID continues in its current formulation, the City will remit to Plaintiffs an amount sufficient to satisfy the amounts paid by Plaintiffs to the DCBID** as part of assessments set forth in the Engineer's Report and the Management Plan.

II AA 7 at 227. A plain reading of Paragraph 5 straightforwardly entitles RHF to continued reimbursements from the City for so long as DCBID continues in the same formulation, even through its renewals.

Because Paragraph 5 is so disadvantageous to the City's position, the City attempts to divert the Court's attention to other paragraphs, tellingly beginning its analysis with Paragraph 6 and then briefly referencing Paragraphs 4 and 2. RB at 16-19. So strongly does the plain language of Paragraph 5 favor RHF that the City also argues, for the very first time, that Paragraph 5 – rather than providing a duration for the Settlement Agreement – merely provides the City with the means to end the Settlement Agreement *before* December 31, 2017.[3] RB at 20. The City elaborates,

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[3] The City's brand new argument was obviously inspired by RHF's Opening Brief, which explains how DCBID could have been reformulated by the City. But in the underlying papers, the City chose instead to simply ignore and disregard Paragraph 5, unable to reconcile it with its argument

"The Agreement's own language shows that the intent of Paragraph 5 was to allow the City to fix any perceived issues with the 2013 DCBID and then be free of its obligations under the Settlement Agreement." RB at 21.

There is nothing in the record or the Settlement Agreement to support this reading. Paragraph 5 is more than just a provision allowing the City to free itself from its obligations prior to December 31, 2017. It establishes a duration for the Settlement Agreement, which is contingent upon whether DCBID continues in the same formulation.

In discussing Paragraph 5, the City also points to the fact that it contains language referring to "the Engineer's Report and the Management Plan." RB at 18. This reference to assessments set under the Engineer's Report and Management Plan, however, is merely an acknowledgement that these documents contain RHF's assessment amounts and how they are calculated. Regardless of the year, there will always be an Engineer's Report and Management Plan in connection with DCBID or any other business improvement district. *See* Cal. Const. art. XIII D § 4(b); Sts. & High. Code § 36622. Given that the language in Paragraph 5 does not refer

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that the other paragraphs limit the Settlement Agreement to December 31, 2017. *See* III AA 12 at 411:26-412:16.

to a specific Engineer's Report or Management District Plan,[4] or any specific date, such language should not be read to limit the enforceability of the Settlement Agreement.

Notwithstanding the City's strained interpretation of the Settlement Agreement, a plain reading of Paragraph 5, in conjunction with a plain reading of the other paragraphs, including Paragraphs 1, 2, 4, and 6, makes clear that Paragraph 5 is central to the issue on appeal, without interfering with the purpose and effect of the other provisions, and entitles RHF to reimbursements for so long as DCBID continues in the same formulation.[5]

1. Paragraph 1

Paragraph 1 explains that disputes have arisen between RHF and the City regarding DCBID. *See* II AA 7 at 227; *see also* AOB at 27 and 42. Paragraph 1 also defines DCBID as "the Downtown Center Business Improvement District (the "DCBID") located in the City of Los Angeles." *See* II AA 7 at 227. **This definition is without any reference to an**

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[4] These are not defined terms in the Settlement Agreement. *See* II AA 7 at 227-231.

[5] RHF respectfully requests that the Court regard the City's commentary – that "[t]his is an odd method of interpreting documents," and that the City does not understand "[w]hatever Appellants are doing here" – as nothing more than a concession that the City is unable to counter RHF's arguments. *See, e.g.,* RB at 22.

ordinance or a December 31, 2017 end date. *See* II AA 7 at 227. In addressing Paragraph 1 (and the definition of DCBID contained therein), the City focuses on the language, "as set forth in an action entitled . . . (the 'Litigation')," to suggest that the definition of DCBID is somehow limited to its expired term. RB at 37. However, it is the "[d]isputes [which] have arisen between the parties regarding . . . (the 'DCBID')" which are defined by reference to the Litigation, not DCBID itself. II AA 7 at 227.

2. Paragraphs 2 and 4

Without much elaboration, the City argues that "Paragraph 2 describes that litigation as addressing 'the formation of the DCBID, adopted by ordinance of the City Council on June 19, 2012.'" RB at 18. RHF agrees with the City that Paragraph 2 describes **the litigation**, and simply and succinctly provides the background from which the litigation arose. *See* II AA 7 at 227. However, that paragraph does not provide or even allude to an end date of the Settlement Agreement. By making the argument that according to Paragraph 2, the City's payments terminate with the expired DCBID term, the City is essentially attempting to interpose new terms to the Settlement Agreement, which is improper.

Similarly, without much elaboration, the City argues that "Paragraph

4 states that the parties are settling 'their claims against each other arising out of and as described in the Litigation.'" RB at 17. Again, RHF agrees with the City that the Settlement Agreement resolved the underlying litigation. Like Paragraph 2, however, Paragraph 4 does not provide or even allude to an end date of the Settlement Agreement.

3. Paragraph 6

Paragraph 6, in relevant part, provides that the Settlement Agreement "does not address any business improvement district, except the DCBID adopted by ordinance of the City Council on June 19, 2012." II AA 7 at 227. With regard to this paragraph, the City argues in relevant part, "Paragraph 6 should fully resolve this matter. Regardless of whether the 2018 DCBID is a 'renewal' of, a 'continuation' of, or entirely unrelated to, the 2013 DCBID, the 2018 DCBID was not 'adopted by ordinance of the City Council on June 19, 2012.'" RB at 16-17. Thus, the City argues that Paragraph 6, not Paragraph 5, is the determining provision here, displacing Paragraph 5.

However, Paragraph 6 does not provide an end date for the Settlement Agreement. Instead, it establishes: (1) **who** is entitled to the relief granted by the Settlement Agreement (RHF); and (2) **which business**

improvement district the Settlement Agreement involves (DCBID). In other words, Paragraph 6 establishes that the Settlement Agreement relates only to DCBID and not a different business improvement, such as the San Pedro Historic Waterfront Property and Business Improvement District, which was the subject matter of separate litigation. *See* Appeal No. B288355.

The City argues that the renewed DCBID is a different business improvement district from the prior DCBID, contending that DCBID's operational periods (e.g., 2013-2017 and 2018-2027) distinguish "this" DCBID from "that" DCBID for purposes of Paragraph 6. This is unpersuasive, especially since there is continuity between the periods, services, boundaries, management, and Engineer's Reports.[6] AOB at 33-38. Moreover, a plain and simple reading of Paragraph 6 makes clear that the purpose of Paragraph 6 was to ensure that: (1) the City does not have to reimburse anyone other than RHF; and (2) the City does not have to remit

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[6] It should be noted that a district is defined by Article XIII D of the California Constitution as "an area determined by an agency." *See* Cal. Const., art. XIII D § 2(d). As the City concedes, DCBID's geographic boundaries remain unchanged. RB at 10. Based on this alone, DCBID is clearly continuing in the same formulation, and the Settlement Agreement is enforceable against the City.

payments to RHF for assessments paid to any districts *other* than DCBID. Paragraph 6 does not displace Paragraph 5.

4. Term 1.a.i-ii

In its brief, the City draws attention to the operative language found on the second page of the Settlement Agreement, Term 1.a.ii. RB at 11. However, the language contained in Term 1.a.ii, and ultimately all of the language contained in Term 1.a, supports RHF's interpretation of the Settlement Agreement. II AA 7 at 228. Term 1.a.i provides in relevant part:

> Plaintiffs shall, within 30 (thirty) days of payment of any assessment paid to the DCBID, whether directly or through the Los Angeles County Assessor's Office, submit proof of payment to Miranda Paster, Office of the Clerk, City of Los Angeles, or a designated successor.

II AA 7 at 228. Nothing in this language suggests that the Settlement Agreement does not continue past December 31, 2017. Rather, the plain language, "any assessment paid to the DCBID," supports finding that the City must reimburse RHF for "any assessments paid to DCBID," regardless of the year or ordinance. Term 1.a.ii, to which the City refers, supports the same finding, providing in relevant part:

> Upon receiving proof of payment of any assessment paid to the DCBID, the City shall, within 30 (thirty) days, provide funds equal to the amount paid by Plaintiffs.

II AA 7 at 228. Again, the language, "any assessment paid to the DCBID," fails to support the City's interpretation, and instead supports RHF's plain reading interpretation that the City remains subject to the Settlement Agreement for so long as DCBID continues in the same formulation.

B. <u>The Circumstances Surrounding the Settlement Agreement Support RHF's Interpretation and the Centrality of Paragraph 5.</u>

In asserting that RHF "direct[s] the Court almost entirely to 'circumstances' that arose **after** the parts [*sic*] disputed terms of the Contract" (which assertion is not true), the City misconstrues and fails to adequately address RHF's argument that: (1) the City drafted the Settlement Agreement intending it to be "simple;" and (2) the parties did not include December 31, 2017 as the Settlement Agreement's terminating date, even though that date was known to the parties at the time of drafting. RB at 23; AOB at 44-45. Both of these circumstances pertain to facts prior to the current dispute, at the time of drafting.

Additionally, at least some of the correspondence exchanged between the City's counsel and RHF's counsel, from May 8, 2017 to June 27, 2017, occurred *prior* to the time that the controversy as to the meaning

of the Settlement Agreement had arisen. II AA 7 at 259-261. Specifically, in an email dated May 22, 2017, the City's counsel wrote:

> We are still looking this over. It appears that the management plan has substantial changes and so the settlement agreement would not apply, but we are still looking into the matter. I should know in a week or so.

II AA 7 at 260. As of the date of this email, the City was "still looking this over," and had yet to determine if there was a dispute. And at this time, the City was focusing on the existence of "substantial changes" to DCBID such that the Settlement Agreement would not apply – clearly a reference to the language of Paragraph 5. It was not until its June 27, 2017 email that the City determined that there was a dispute. II AA 7 at 261. But even then, the specific dispute as to whether Paragraph 5 was or was not central had not arisen because the City had yet to challenge the centrality of Paragraph 5 and seek to displace it with Paragraph 6. Therefore, all of the correspondence from the City from May to June 2017 is helpful in determining the true issue on appeal (whether DCBID is continuing in the same formulation) and what specific provision is at issue (Paragraph 5).[7]

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[7] Apparently concerned about this evidence, the City defensively claims that it "believed it pointless [at the time] to raise Paragraph 6 when Appellants had already disregarded it altogether [and that] [t]hese communications were not court filings where the City waived any argument not made." RB at 25-26. First, RHF's argument is that the correspondence

In arguing that extrinsic evidence cannot be used unless a contract is determined to be ambiguous, RB at 23-24, the City also conveniently ignores the *Morey* case, cited in RHF's Opening Brief. *Morey* provides, "Even if a contract appears unambiguous on its face, a latent ambiguity may be exposed by extrinsic evidence which reveals more than one possible meaning to which the language of the contract is yet reasonably susceptible . . . [and] the trial court must *provisionally* receive any proffered extrinsic evidence which is relevant to show whether the contract is reasonably susceptible of a particular meaning." *Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912 (It is reversible error for a trial court to refuse to consider extrinsic evidence on the basis of the trial court's own conclusion that the language of the contract appears to be clear and unambiguous) (emphasis added).[8] Accordingly, the correspondence can

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is *suggestive* of what provision of the Settlement is at issue – RHF is not arguing that these emails were court filings resulting in the waiver of arguments. Second, the City alleges, without reference to anything in the record, that it believed it pointless at the time of these emails to raise Paragraph 6 as an issue. There is no such evidence in the record. These arguments should be ignored.

[8] In a separate section of its brief, the City does address *Morey* by arguing that the trial court did not commit error by failing to consider the emails because "these emails were in the Record before the Court and were not objected to or excluded from evidence [and] [t]hat is all the law

and should be used to show: (1) the Settlement Agreement was intended to be simple and not intended to *imply* an exact end date of December 31, 2017; (2) Paragraph 5 is central to the Settlement Agreement's enforceability; and (3) whether the Settlement Agreement continues to be in force depends on whether DCBID continues in the same formulation.

III.

DCBID IS CONTINUING IN THE SAME FORMULATION.

A. The Similarities Between DCBID's Two Terms Are Not Superficial.

The City argues that "2018 DCBID" is different from "2013 DCBID." RB at 28. However, the City concedes that "the 2018 DCBID would have the same geographic boundaries as the 2013 DCBID, and similarly calculated special benefit assessments based on property and building sizes." RB at 10. In addition to the boundaries and methodology of calculating the special assessments, RHF also described in its Opening

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requires." RB at 38. However, that the documents exist in the record does not mean the trial court considered them. *See Halicki Films v. Sanderson Sales & Mktg.* (9th Cir. 2008) 547 F.3d 1213, 1223 (in the absence of *indication* in the record that the trial court considered certain documents, the appellate court assumed that the trial court did not consider those documents and failure to consider that evidence was reversible error) (emphasis added).

Brief the substantial portions of identical language contained in both Engineer's Reports, and the continuing administration by the Management Corporation. AOB at 35-36.

Without denying the existence of these continuities, the City attempts to dismiss them as "superficial," and instead points to a single difference between DCBID's expired term and renewed term: the fact that during the renewed term, DCBID is attributing some value to general benefits, which DCBID valued at zero during its expired term.

Article XIII D did not change; DCBID was **always** required to account for general benefits. *See* Cal. Const., Art. XIII D; *see also Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431. The fact that DCBID erroneously calculated the general benefits as zero for the 2013 term, but attributed some value to them in the 2018 term, does not make that entity new or different.

Moreover, the method of calculating assessments, as the City admits, was exactly the same – the only difference was the resulting calculated number.[9]

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[9] According to the Engineer's Report in connection with DCBID's expired term, district parcels were assessed based on their respective assessable square footage, which is multiplied by a rate dependent on which of the two zones the specific parcel is located. II AA 7 at 276-283. Because the Engineer's Report determined that DCBID's "services solely

That the City cured a constitutional defect in DCBID's previous term does not render DCBID a new and different entity.

B. <u>A Renewed Business Improvement District is Not a New Business Improvement District.</u>

The City argues that if a business improvement district is established pursuant to rules creating a new district, even as a renewal of a district, then

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provide a special benefit to each of the individual assessed parcels in the District," general benefits were quantified at zero. II AA 7 at 274. This finding of zero general benefits was inconsistent with the California Supreme Court's holding that economic enhancements, quality-of-life benefits, and derivative, indirect benefits constitute general benefits. *See Silicon Valley,* 44 Cal.4th at 453-54 ("public improvements often provide both general benefits to the community and special benefits to a particular property"); *Beutz v. County of Riverside* (2010) 184 Cal.App.4th 1516, 1531 ("virtually all public improvement projects provide general benefits"); *see also* Cal. Const. Art. XIII D § 2(i) ("General enhancement of property value does not constitute 'special benefit.'").

According to the Engineer's Report in connection with DCBID's renewed term, district parcels are continuing to be assessed based on their respective assessable square footage amounts, which is multiplied by a rate dependent on which of the two zones the specific parcel is located. II AA 7 at 352-362. General benefits, however, are not quantified as zero (even though the services and the boundaries are exactly the same, supporting the obvious conclusion that the zero general benefit quantification from DCBID's expired term was incorrect). II AA 7 at 360 (total general benefits = $64,316.11). According to the Engineer's Report, this general benefit amount is subtracted from DCBID's budget and the rate which is multiplied by an individual parcel's assessable square footage is determined by the adjusted budget total. II AA 7 at 361-362.

such a district is created anew. RB at 29. Tellingly, DCBID portrayed itself to the District's residents as **continuing** when beginning the renewal process. *See* II AA 7 at 234-243. Moreover, close reading of Streets and Highways Code Section 36630 shows that the City's current argument is incorrect:

> If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and **the district may be renewed pursuant to this part.**

(Emphasis added). Section 36630 thus provides that renewals can be achieved pursuant to the same procedures required for creating new districts. This does not, and should not, mean that renewals are equivalent to new creations. Renewals, albeit established pursuant to the same procedures used to create new business improvement districts as instructed by Section 36630, are continuations of already existing districts.[10] This distinction is recognized by the Streets and Highways Code, which distinguishes between renewals (Chapter 5 of Part 7, the Property and

Business Improvement District Law of 1994) and new establishments

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[10] Because renewals are achieved by the same rules applicable to new creations, a new ordinance must be enacted for any renewal of a business improvement district. That there is a different ordinance for every renewal does not negate the fact that a business improvement district is continuing in the same formulation.

(Chapter 2 of Part 7). Because the statutes governing renewals incorporate the statutes governing establishments, renewals can also be challenged pursuant to Streets and Highways Code Section 36633, and the time to challenge did not expire when DCBID was initially established in the 1990s, as the City concedes. RB at 9. Thus, the statutory structure also support's RHF's position.

IV.

THE CITY MISCONSTRUES THE LAW AND THE TRIAL COURT'S RULING.

The City requests that the Court of Appeal disregard the trial court's errors because "[r]egardless of whether the Court erred in its ruling, the City has shown that the result is correct and should be affirmed." RB at 32. However, the trial court's errors are not few and are not inconsequential, as outlined in Section IV.A of RHF's Opening Brief.

A. A Common Sense Reading is Not Equivalent to a Plain Language Reading.

The City begins its legal argument by asserting, "The Superior Court applied **a common sense reading** of the terms of the Settlement Agreement as a whole." RB at 13 (emphasis added). However, **a plain language**

reading of the Settlement Agreement is required by the rules of contractual interpretation, which are set forth in California Civil Code section 1635 *et seq*. IV AA 16 677:9-11. Of course, in conducting a plain language analysis, common sense is necessary, but the two concepts are not interchangeable. *See* Civ. Code §§ 1638, 1639, and 1644. If, as the City argues, the trial court conducted a common sense reading of the terms of the Settlement Agreement as a whole, rather than a plain language reading, then the trial court committed further error in addition to those already discussed in RHF's Opening Brief.

B. <u>The Trial Court Erroneously Added Material Language Into the 664.6 Settlement Agreement.</u>

The City argues that the trial court did not change the language of the Settlement Agreement; rather, that the trial court "simply read the agreement in a common sense manner." RB at 36-38. By confusing "plain reading" with a so-called "common sense reading," the City tries to camouflage the fact that the trial court explicitly changed the language of the Settlement Agreement. Specifically, after erroneously determining as a preliminary finding that the Settlement Agreement was necessarily limited to the claims contained in the Petition, the trial court decided to "interpret[]

every reference to 'the DCBID' in the Agreement as a reference to the 2012 ordinance." *See* IV AA 16 at 678:12-17. Based on this improper interchangeability, the trial court determined that the Settlement Agreement lasted only for the five year period the ordinance remained in effect. *See* IV AA 16 at 678:12-17.

However, "DCBID" is not interchangeable with the "Ordinance of Intention" because the interchangeability was based on a flawed preliminary finding that the Settlement Agreement was limited to the claims contained in the Petition and because the plain language of the Settlement Agreement does not support this interpretation. *See* AOB at 26-30. Thus, contrary to the City's representation, the trial court did change the language of the Settlement Agreement, and this was improper.[11]

As already argued in RHF's Opening Brief (and in the underlying papers), "While the court may interpret the terms of the parties' settlement

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[11] With regard to the trial court's imposition of a five year limit to the Settlement Agreement, the City additionally argues that RHF waived argument to the contrary on appeal. There has been no such waiver, however, given that RHF fully addressed the unreasonableness of the trial court's imputing of terms in its Opening Brief with cites to the relevant record. AOB at 31-32. Specifically, RHF argued that the trial court's interpretation of the Settlement Agreement, limiting it to a duration of five years, was unreasonable. Again, the City's efforts to misconstrue RHF's arguments should be disregarded.

agreement, 'nothing in section 664.6 authorizes a judge to create the material terms of a settlement, as opposed to deciding what terms the parties themselves have previously agreed upon." *See Leeman v. Adams Extract & Spices, LLC* (2015) 236 Cal.App.4th 1367, 1374 (citing *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810; *Hernandez v. Board of Education* (2004) 126 Cal.App.4th 1161, 1176; *Reed v. Murphy* (2004) 196 Cal. 395, 399 ["if a consent judgment or decree is different from or goes beyond the terms of the stipulation which forms its basis it may be set aside upon appeal . . . as it would not be in reality a consent agreement"]). Accordingly, the City's efforts to gloss over the trial court's improper creation of material terms should be rejected.

C. <u>The Settlement Agreement Was Not Limited to the Petition.</u>

The City additionally tries to make the trial court's ruling more reasonable by stating, "The Court did not find . . . that settlements are 'necessarily limited to pending claims, nor did the Court 'presume' that settlements are so limited." RB at 33. However, the City, in its underlying papers, made the very argument that it now says the trial court did not accept in its ruling. Specifically, the City made a "maximum relief" argument, claiming that the Settlement Agreement "gave [RHF] maximum

relief a court could have provided: freedom from assessments relating to the 2013 DCBID [and therefore it] clearly and unambiguously applies only to the 2013 DCBID." III AA 12 at 414:7-9.

RHF disputed this supposed "maximum relief argument" by explaining in its underlying reply papers that "neither the law nor the Settlement Agreement requires that the relief provided by the Settlement Agreement be limited to the maximum relief that could have been granted in the underlying litigation had the parties not settled." IV AA 15 at 662:17-26. Settlement agreements almost always contain relief that a trial court could not grant, such as general releases and California Civil Code Section 1542 waivers. And of course, they also contain many other terms of all types and nature far beyond the trial court's power in ruling on a specific complaint. RHF also noted that had RHF not settled the lawsuit, DCBID could have been invalidated completely for its noncompliance with California's constitutional law governing business improvement districts; therefore, granting RHF relief from future DCBID assessments was a small price to pay for the City.[12] IV AA 15 at 662:17-26. Yet the trial court

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[12] To illustrate, according to DCBID's Engineer's Report in connection with its expired term, the operating budget for 2013 totaled $5,953,700 – all of which was paid by assessees because general benefits

relied on the City's "maximum relief" argument as the basis for its flawed preliminary finding that the scope of the Settlement Agreement was necessarily limited to the Petition. *See* AOB at 22-24; *see also* IV AA 16 at 677:9-19. This was error.

D. RHF's Fourth Cause of Action Was Not Tied to Any Particular Ordinance, Engineer's Report, or Management District Plan.

As noted in Footnote 3 of the City's Brief, the merits of the fourth cause of action are irrelevant. What is relevant, however, is that the trial court erred in limiting the Settlement Agreement to claims expressly alleged in the Petition because it did not consider this fourth cause of action – at all. The trial court incorrectly summarized the Petition as specifically challenging only Ordinance No. 182107, when RHF's fourth cause of action alleged that DCBID's assessments were improper on the basis that RHF's nonprofit status exempted it from assessments generally, *including* DCBID's assessments. I AA 1 at 13:15-14:10. A Settlement Agreement which was limited to one term's worth of assessments would not have resolved this claim. Assuming, *arguendo,* the propriety of the trial court's

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were valued at $0. II AA 7 at 276, 280. Ignoring the fact that assessments were subject to an annual increase of up to 5 percent, DCBID's expired term of five years had a total value of $29,768,500.

preliminary finding that a settlement agreement is limited to the claims alleged in the lawsuit, the Settlement Agreement as interpreted by the trial court and the City would not have resolved RHF's fourth cause of action.

The City countered as follows: "This argument does not address the Court's actual reasoning. The Court reasoned that the lawsuit addressed one BID, the 2013 DCBID." RB at 35. This misconstrues the trial court's ruling, which provided, "The Court agrees with the City that the plain language of the Agreement limits the City's obligations to the term of the 2012 *ordinance* challenged in the Petition." IV AA 16 at 677:9-11 (emphasis added). Thus the trial court reasoned that the lawsuit addressed only a particular ordinance, not a particular business improvement district. Indeed, even the trial court did not find that the renewed DCBID was a new or different entity – rather it reasoned that the Petition challenged only the *term* of DCBID set forth by the 2012 ordinance. However, because the Petition actually challenged the City's right to **ever** assess RHF – by virtue of the fourth cause of action – the trial court's analysis and ruling were fundamentally flawed.

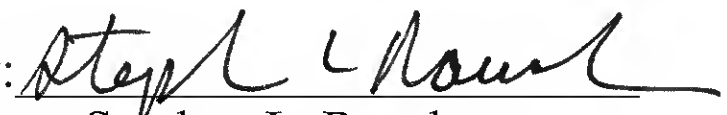
V.

CONCLUSION

For the foregoing reasons, RHF requests that the Court of Appeal reverse the trial court's erroneous ruling and find the Settlement Agreement enforceable through DCBID's renewed term.

DATED: August 7, 2018

REUBEN RAUCHER & BLUM

By: 

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CERTIFICATE OF COMPLIANCE

[Cal. Rule of Court 8.204(c)(1)]

The text of this brief consists of 5,827 words as counted by the Microsoft Word 2010 word-processing program used to generate the brief, not including the tables of contents and authorities, and caption page.

DATED: August 7, 2018

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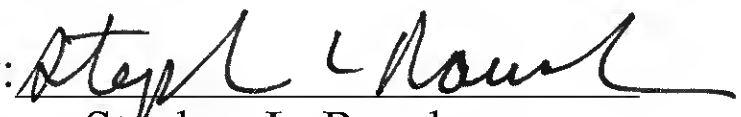
By: 

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PROOF OF SERVICE BY E-MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action, my business address is 12400 Wilshire Boulevard, Suite 800, Los Angeles, California 90025.

On August 7, 2018, I served the foregoing document described as:

APPELLANTS' REPLY BRIEF

on all interested parties in this action by serving a true copy of the above described document in the following manner:

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I am familiar with the office practice of Reuben Raucher & Blum for collecting and processing documents for delivery by E-Mail. Under that practice, documents and email by Reuben Raucher & Blum personnel responsible for emailing are transmitted on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 7, 2018, at Los Angeles, California.

Nathalie Quach